

Appl. No. : 10/075668  
Filed : February 13, 2002

### REMARKS

Upon entry of the foregoing claim amendments, Claims 1-5, 7-23, and 47-49 remain pending, Claims 17-20, 23 and 47 having been amended.

#### Allowed Claims

Applicant acknowledges with appreciation the Examiner's indication that Claims 1-5, 7-16, 22, 48 and 49 are allowed.

#### Rejection of the Claims Under 35 U.S.C. § 112

Claims 20, 21 and 23 stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Examiner notes that "[i]n Claim 20, the limitation 'said spring member comprises a spacer' renders the claim vague and indefinite since the spring member is separate from the spacer." Claims 21 and 23 depend from Claim 20 and were rejected on the same ground as Claim 20.

Applicant has amended Claim 20 to remove the limitation "said spring member comprises a spacer." Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of Claims 20, 21, and 23.

#### Rejection of the Claims Under 35 U.S.C. § 102

Claims 17-21, 23, and 47 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Farris et al. (U.S. Pat. No. 6,485,491).

The shortcomings of the structure disclosed in the Farris patent are elaborated upon in a *Declaration of Alan E. Shluzus Pursuant to 37 C.F.R. §1.132*, filed on March 24, 2005, which is hereby incorporated into this response. In particular, as discussed in the declaration and the response originally filed on February 28, 2005, the Farris patent discloses, in connection with Figure 53, a multi-axial bone anchor assembly 262 that includes a saddle member 22d, a bone anchoring member 24a, and a washer 26d. The saddle member 22d has a channel 34d (shown in Figure 54) that receives a rod 36. A snap ring 28 secures the washer 26d in the saddle member 22d. The snap ring 28 engages a snap ring recess 266 (shown in Figure 56).

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However, even assuming that the saddle member 22d is a housing, the bone anchoring member 24a is a fastener, the washer 26d is a spacer, and the rod 36 is a longitudinal member, unlike the embodiments described in this application, the structure described in Figure 53 of the Farris patent would not prevent relative movement between a fastener and a housing and would not hold a longitudinal axis of the fastener in any one of a plurality of desired angular positions relative to a longitudinal axis of a passage in the housing when a longitudinal member is disengaged from a spacer. Also, the Farris patent does not teach an arrangement where a spacer necessarily engages a fastener when a longitudinal member is so disengaged.

Specifically, Farris does not disclose, among other things, "a spacer received in said second passage of said housing and engageable with said fastener and said longitudinal member and having a radial surface below said horizontal retention structure; and a spring member engaging both the horizontal retention structure in said second passage and said radial surface of the spacer that applies an axial force preventing relative movement between said fastener and said housing."

As discussed in the response originally filed on February 28, 2005, the embodiment of Figures 1 and 17A of Farris also does not teach or suggest at least these features.

Applicant has amended Claim 17 to recite, among other limitations, "a spacer received in said second passage of said housing and engageable with said fastener and said longitudinal member and having a radial surface below said horizontal retention structure; and a spring member engaging both the horizontal retention structure in said second passage and said radial surface of the spacer that applies an axial force preventing relative movement between said fastener and said housing." Accordingly, Applicant respectfully submits that Claim 17 is allowable over Farris. Claims 18-21 and 23 depend from amended Claim 17. Therefore, Applicant respectfully submits Claims 18-21 and 23 are likewise allowable over Farris, for at least the same reasons as Claim 17.

Applicant has also amended Claim 47 to recite, among other limitations, "a spacer received in said second passage of said housing and engageable with said fastener and said longitudinal member, the spacer having a radial surface below said horizontal indentation; and a member engaging both the horizontal indentation and the radial surface of the spacer to apply an

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axial force to inhibit relative movement between the fastener and the housing." Accordingly, Applicant respectfully submits that Claim 47 is allowable over Farris.

### CONCLUSION

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

For the foregoing reasons, the Applicant respectfully submits that the present application is in condition for allowance, and the Applicant respectfully requests that a Notice of Allowance be issued at the earliest opportunity

Respectfully submitted,

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